Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link-Up	)	WC Docket No. 03-109

To: The Commission

REPLY COMMENTS OF T-MOBILE USA, INC.

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INTRODUCTION

T-Mobile USA, Inc. ("T-Mobile") replies to the comments filed addressing the Commission's Notice of Proposed Rulemaking ("NPRM") regarding reform of the universal service fund ("USF") program for rural and high-cost areas and the intercarrier compensation ("ICC") regime.[1] In implementing ICC and USF reform, the Commission should be guided by consumer benefits, the public interest in competition and the pressing need for broadband deployment, not just by the impact on particular carriers. Although the ICC and USF regimes

[1] *Connect America Fund*, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 26 FCC Rcd 4554 (2011) ("NPRM").

are inextricably linked, and the Commission is correct to undertake reform of both, ICC reform will have the most immediate and greatest impact on consumers overall.

Specifically, the total dollar impact on all end users of the retail cost savings that will result from significant reductions in current ICC rates – now totaling an estimated $14 billion annually[2] – will be far greater than the end user impact of the proposed funding shift from the existing USF high-cost mechanisms to the forthcoming Mobility Fund and Connect American Fund ("CAF"). ICC rate reductions also will free up billions of dollars for broadband deployment and network upgrades.

The Commission would create the greatest consumer benefit in the most efficient manner first by addressing the "low hanging fruit." Assuming that the Commission immediately addresses the arbitrage issues raised in Part XV of the NPRM[3] and implements significant ICC reforms for the largest carriers over a four-year transition, consumers would experience most of the benefits of ICC/USF reform reasonably promptly.[4] Reforms affecting smaller carriers that are more dependent on ICC revenue and USF support could be implemented over a somewhat longer transition period.[5]

SUMMARY

There is widespread agreement that meaningful ICC reform must be accompanied by a managed transition to the emerging IP network. In order to remove incentives to delay ICC rate

[2] FCC, *Connecting America: The National Broadband Plan* at 142 (Mar. 16, 2010) ("NBP").

[3] *See* Comments of T-Mobile USA, Inc., WC Dkt. 10-90 (Apr. 1, 2011) (addressing arbitrage issues).

[4] *See* T-Mobile Comments at 26-31. The initial comments filed in this proceeding on or about April 18, 2011 will be cited in this abbreviated manner throughout.

[5] *See id.* at 28-31.

reductions, the Commission should implement IP interconnection and traffic exchange rules that ensure providers' ability to interconnect on nondiscriminatory terms as traffic migrates to IP networks. An IP interconnection regime modeled on Internet engineering principles would ensure the efficient and effective operation of advanced networks. Unless IP interconnection rules are put in place, the current incentives to maximize ICC charges at local exchange carrier ("LEC") interconnection points will retard that transformation, thereby frustrating the Commission's ICC reform goals and delaying broadband deployment.

Ample record support exists for the Commission to implement near term significant ICC reform for roughly 90 percent of voice traffic in the United States for the benefit of consumers and broadband deployment. The largest incumbent LECs ("ILECs") and the competitive carriers serving the same areas agreed, for the most part, that the ultimate endpoint of ICC reform should be bill-and-keep ("B&K") or a unitary rate close to zero, while parties expressing concern regarding the financial impact of ICC reform on smaller ILECs advocated a range of higher, carrier-specific rates. Based on the record, it would be reasonable for the Commission to establish no longer than a four-year transition to B&K for the largest carriers, and it could allow a somewhat more gradual transition for all other carriers to unify their access rates at interstate access levels.

A broad range of commenters correctly opposed an ICC revenue recovery fund on competitive neutrality and efficiency grounds or argued for strict limits on such a fund. Most parties also supported relaxing or eliminating subscriber line charge ("SLC") caps in order to provide carriers with increased flexibility to recover their costs. Accordingly, the Commission should not abandon its ICC and USF reform goals by establishing an ICC revenue recovery fund. If the Commission nevertheless creates a recovery fund, access to it should be restricted to those carriers whose retail service rates would be unaffordable otherwise and time-limited, so that it does not become an open-ended revenue replacement fund for ILECs.

The initial comments widely supported the proposals to eliminate or restrict the various forms of high-cost USF support currently received by the ILECs and to transition that support to the CAF. There was also widespread support for the elimination of Interstate Access Support ("IAS") on a competitively and technologically neutral basis and transitioning that support to the CAF. A broad range of parties similarly recognized that competitive and technological neutrality also require that all forms of high-cost support received by competitive eligible telecommunications carriers ("CETCs") be phased out on the same timeline as for ILECs.

Competitive and technological neutrality requirements also require the Commission to reject the proposal to offer ILECs a right of first refusal to CAF support. Such favoritism cannot be justified. Otherwise, the initial comments reflected a wide variety of approaches to the distribution of CAF support. T-Mobile has long believed that USF statutory requirements and policies would be best served by multiple winner reverse auctions, along the lines of CTIA's "winner takes more" approach. In view of the lack of consensus on this issue, however, the Commission could conduct pilot programs applying a variety of market-based approaches, including multiple winner reverse auctions, and then select the most effective method or methods for wider application.

A broad consensus of comments supported an inclusive definition of broadband services, taking into account a wide range of service characteristics preferred by consumers, including mobility. In order to accommodate the variety of mobile broadband services that consumers want and use, any speed criterion should not be faster than 4 Mbps downstream and 768 Kbps upstream. The record also supports the elimination of state carrier-of-last-resort ("COLR") obligations and similar ETC requirements as a condition of USF support, except for uniform, neutral broadband service obligations undertaken in the areas in which carriers receive support.

DISCUSSION

I. A WIDE RANGE OF INDUSTRY STAKEHOLDERS SUPPORTS SIGNIFICANT ICC RATE REDUCTIONS, UNIFIED RATES AND THE ADOPTION OF IP INTERCONNECTION RULES

A. IP Interconnection Rules Are Needed To Facilitate The Transition To An All-IP Network

Most parties commenting on IP interconnection issues agreed that the Commission should set basic IP interconnection rules in order to ensure providers' ability to interconnect on nondiscriminatory terms.[6] Commenters also emphasized that far fewer points of interconnection ("POIs") should be established in an all-IP world – similarly to the Internet – than the thousands of POIs that make up the public switched telephone network ("PSTN") today.[7]

The current lack of interconnection rules for the Internet does not suggest that no such rules are necessary for the transition from the PSTN to an all-IP world.[8] The PSTN was built at a time when ILECs provided single POIs to end users for "access" and "content" (*i.e.,* analog voice). The Internet, by contrast, evolved as a voluntary network of networks parallel to the PSTN and carries different traffic from the PSTN on a packet-switched basis, using multiple routes for delivery to end users. Access to the Internet is provided by multiple platforms, and content is provided by a variety of sources. As PSTN traffic is migrated to the all-IP network, ILECs will retain the incentive to control traffic flows over multiple POIs and to require all calls

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[6] Cox Comments at 17-19; COMPTEL Comments at 4-5; Google Comments at 10-11; Sprint Comments at 16-28; XO Comments at 11, 16, 21-23, 31-33.

[7] Level 3 Comments at 11-13 (proposing a default rule of a single POI per state); Sprint Comments at 16 (LATA-based POIs have no place in IP networks).

[8] *See* AT&T Comments at 24-30, 32; Verizon Comments at 16-18.

to be converted to time division multiplexing ("TDM"). As the National Broadband Plan ("NBP") points out, the ICC revenue and protocol conversion charges generated by the existing architecture create incentives to maintain the PSTN in its current form, thereby delaying its transformation into an all-IP network.[9] Because ILEC circuit switches historically provided unique access to end users, they have allowed ILECs to assess fees on PSTN traffic.

The Commission can ensure that PSTN interconnection inefficiencies do not extend to the emerging IP network by requiring nondiscriminatory interconnection rights and ruling that packetized voice calls need not be delivered via circuit switches and converted to TDM. As other commenters explained, the Commission needs to ensure that the transition to an IP network is not stymied by an interconnection regime unilaterally established by ILECs[10] and that providers are not prevented from exchanging traffic in an IP format.[11]

Without the substantial reduction of POIs required to transform the PSTN into an efficient all-IP network, ILECs will have incentives to continue to impose unnecessary transport and switching costs on other carriers. When a competitive carrier delivers a call to an ILEC, the former typically is required to carry the call deep into the ILEC's service area to hand it off at one of the ILEC's tandems or the end office serving the called party. This arrangement allows the ILEC to impose tandem and end office switching and tandem transport costs on the originating carrier and typically requires the originating carrier to purchase from the ILEC all of the transport necessary to carry the call from the edge of the ILEC's service area to the tandem.

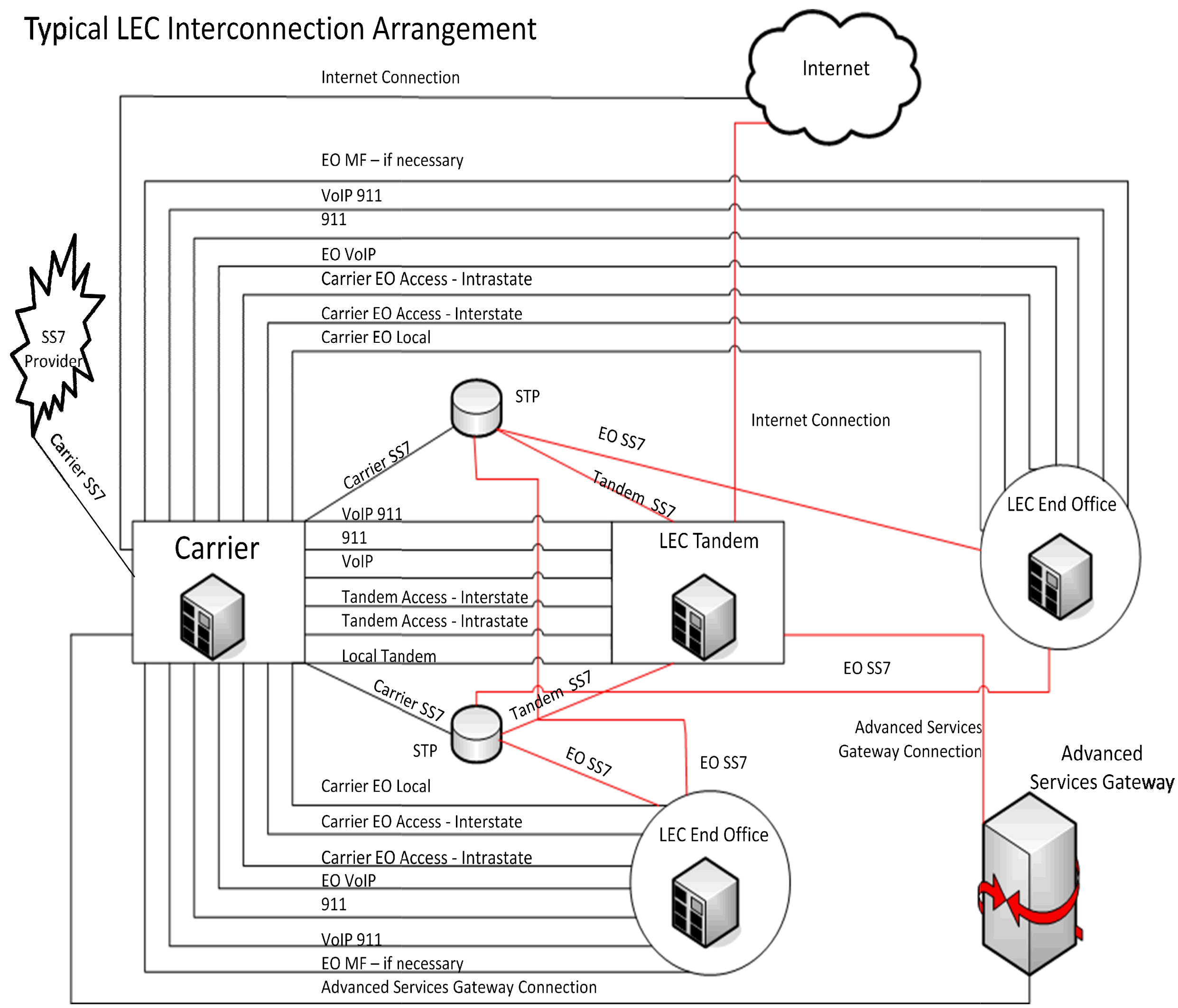
[9] NBP at 142. *See* Cablevision Comments at 3.

[10] COMPTEL Comments at 4-5.

[11] XO Comments at 11.

The ILEC is often the only entity that can provide the transport facilities needed to carry traffic within its territory, outside of urban areas.

The complexities and costs generated by the numerous types of ILEC network connections in the PSTN, multiplied by the tens of thousands of ILEC controlled POIs that generate tolls, are illustrated by the following diagram:



Under this antiquated structure, duplication of trunking and other facilities that perform the same function needlessly increases costs. As an example, ILECs require that their competitors use multiple types of trunks that perform the same function, even though signaling alone could easily distinguish the traffic, and all of which extract additional payments. These costs also serve as a barrier to entry because competitors must fund the existing network in addition to their own operations and "must accommodate the ILEC's hierarchical, TDM network topology," which also increases costs.[12] Today's PSTN is a relic that retards technological innovation, and the Commission should develop modern IP interconnection rules to speed its transformation.

Under an IP network model, all calls, including VoIP calls, would be handed off to receiving carriers, including ILECs, at one of the roughly 30 national IP POIs, typically on a settlement free basis.[13] Without the opportunity to charge various circuit switching-related costs to originating carriers, the ILECs would have a strong incentive to transport calls within their own networks in the most efficient manner possible.[14] Thus, the efficient IP interconnection regime proposed in T-Mobile's initial comments will generate incentives for further efficiencies.[15]

The efficient interconnection regime in an all-IP network is illustrated by the following diagram:

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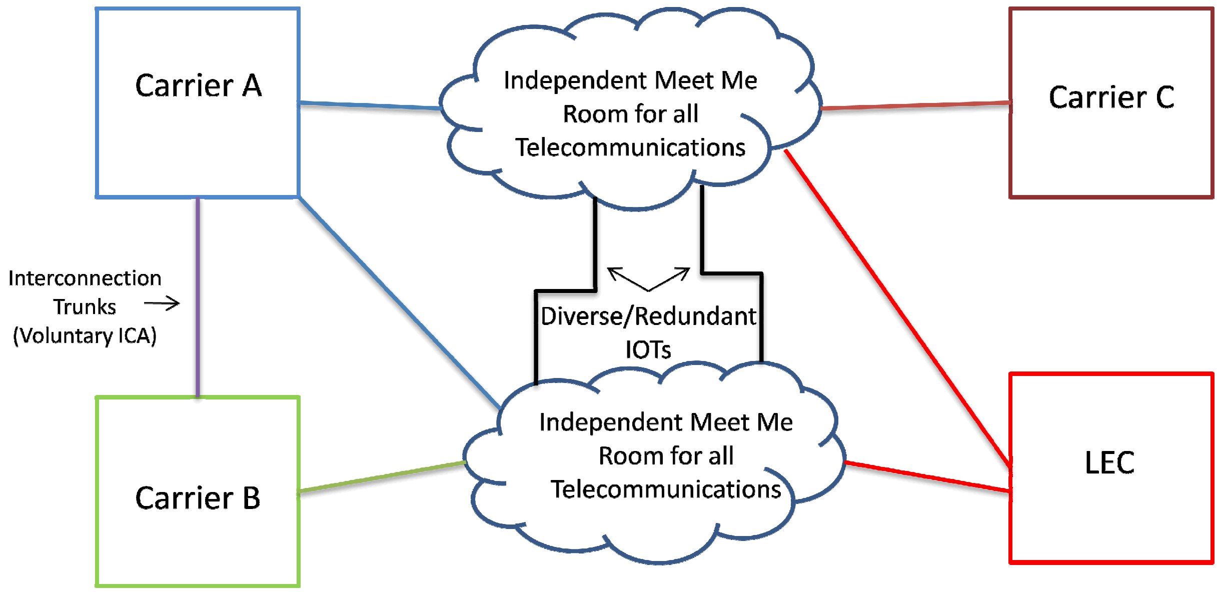
[12] Cablevision Comments at 3.

[13] *See* T-Mobile Comments at 18.

[14] *See* Cablevision Comments at 7.

[15] T-Mobile Comments at 18-22.

Peering Based Interconnection/ICC Regime



Under this IP-based architecture, no carrier controls access to end users or multiple POIs, and, therefore, no carrier has the incentive or ability to impose inefficient routing or tolls. An IP-based architecture also is more robust and is not susceptible to ILEC outages that affect many other carriers. Thus, as explained above, IP interconnection rules will speed the transformation of the PSTN into an IP network, facilitating the Commission's ICC reform goals and promoting broadband deployment.

B. The Record Supports Reducing ICC Rates For The Largest Carriers To Bill And Keep Or Near Zero

A broad and diverse range of industry stakeholders supported B&K or a very low unitary termination rate at the end of the ICC reduction transition,[16] while smaller RLECs, state

[16] AT&T Comments at 30-31; CTIA Comments at ii, 36-39 (B&K); Ad Hoc Comments at 43-46 (B&K); Google Comments at 9 (B&K); MetroPCS Comments at 13, 23-24 (B&K); Verizon Comments at 11-13 ($0.0007 per minute); California PUC Comments at 18-20 ($0.0007 per minute or, in appropriate circumstances, B&K, with state supervision of intrastate access rates and implementation of FCC guidance); Cox Comments at 12-14 (B&K or near zero).

commissions and other parties advocated a range of higher, carrier-specific endpoints.[17] Commenters advocating B&K or a very low unitary rate correctly noted that, because both parties to a call benefit, both "cause" whatever costs may be generated. Moreover, the termination of calls using modern switches no longer generates traffic sensitive costs.[18] Moreover, the existing ICC regime discourages carriers from investing in IP technology in order to continue collecting ICC charges for terminating TDM traffic through circuit switches.[19] B&K also would save the tremendous administrative, billing, collection and litigation costs generated by the existing ICC regime.

In sum, the economic and consumer benefits of B&K are patently clear, and the Commission thus should adopt a reasonably accelerated transition to B&K, at least for the largest carriers. With few exceptions, opposition to B&K or ICC rates approaching zero stems almost entirely from smaller ILECs – *i.e.,* ILECs other than the former Regional Bell Holding Companies ("RBHCs") – or parties concerned about the effects of ICC reductions on smaller ILECs, most of which have been dependent historically on ICC revenues and high-cost support for much, if not most, of their revenues.[20] Even smaller ILECs, or parties raising concerns as to

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[17] *See, e.g.,* XO Comments at 18-19 (reciprocal compensation rates or lower); Joint Board State Member Comments at 154 (lower of intrastate access rate or reciprocal compensation rates); Ohio PUC Comments at 57 (states should be encouraged to reduce intrastate access rates to mirror interstate access rates); Frontier Comments at 9 (transport rates); NASUCA Comments at 96-103; NECA Comments at 19-22.

[18] AT&T Comments at 14-16; CTIA Comments at 35-36, 39.

[19] Comcast Comments at 3-4; CTIA Comments at ii, 35-36; Sprint Comments at 4; Time Warner Cable Comments at 3-4.

[20] *See, e.g.,* Joint Board State Member Comments at 148-51; NECA Comments at 19-22; Public Knowledge Comments at 24-27; NASUCA Comments at 96-103.

those carriers, however, expressed a broad consensus for reducing their exorbitant intrastate access charges to interstate access levels over a fairly brief transition period.[21]

Accordingly, there is simply no reason that, within four years, the Commission could not reduce ICC rates to B&K for the roughly 90 percent of all PSTN traffic handled by the largest ILECs – AT&T, CenturyLink (the second largest carrier in the nation), and Verizon – and their competitors.[22] Now that CenturyLink "is at or near the top of every category in the industry,"[23] it should be treated like AT&T and Verizon, at least for ICC and USF purposes. The access traffic of all smaller ILECs could be moved to unified rates at each carrier's interstate access

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[21] *See, e.g.,* NECA Comments at 13-14; Ohio PUC Comments at 57 (states should be encouraged to reduce intrastate access rates to mirror interstate access rates); Frontier Comments at 5-6, 9 (states should be encouraged to reduce intrastate access rates to interstate access levels before all ICC rates are reduced to level of transport costs); California PUC Comments at 18 (pursuant to FCC guidance, states should reduce intrastate access rates to interstate levels before further ICC reductions); ITTA Comments at 43 (intrastate and interstate access rates should be unified before making further ICC reductions).

[22] Unlike AT&T and Verizon, CenturyLink advocated carriers' current interstate access rates as the appropriate endpoint for ICC reform. CenturyLink Comments at 57-60. In view of the size and scale of CenturyLink, however, especially in light of the "increased operational efficiencies" it promised as a result of its acquisition of Qwest (*see Applications filed by Qwest Communications Int'l Inc. and CenturyTel, Inc. d/b/a CenturyLink for Consent to Transfer Control*, 26 FCC Rcd 4194, 4213 n.142 (2011)), and Qwest's prior support for reduction of all ICC rates to "zero or a small uniform rate" (*see* T-Mobile Comments at 26-27 n.82), the record does not justify treating CenturyLink like a smaller ILEC.

The Joint Board State Members analyzed the impact of ICC and USF reductions on mid-size and small ILECs. Only five mid-size carriers were examined, two of which were the pre-acquisition CenturyLink and Qwest. The conclusions regarding the severity of the financial impact on carriers and their customers were much less definitive in the case of the mid-size ILECs than for the small ILECs. *See* Joint Board State Member Comments at 93-117. The analysis concludes that the ICC reductions that were studied, including B&K, "would affect most small carriers and *some* mid-sized carriers." *Id.* at 116 (emphasis added). In view of these conclusions, the Joint Board State Member analysis does not support exempting the post-acquisition CenturyLink from a transition to B&K.

[23] Greg Hilburn, *Post: Acquisitions make CenturyLink competitive nationally,* The news star.com (May 18, 2011), *available at:* http://www.thenewsstar.com/article/20110518/NEWS01/110518022.

levels without serious controversy.[24] The Commission can then address the need for additional ICC reductions for smaller ILECs over a longer transition period. T-Mobile emphasizes that this "two-track" ICC transition scheme, however, will be undermined if the Commission does not immediately address "traffic pumping," "phantom traffic" and other arbitrage schemes that are enabled by non-uniform ICC rates. A longer transition for smaller ILECs and their competitors means that the arbitrage issues raised in the NPRM will be relevant for a longer "interim" period, and thus, these issues continue to require the Commission's immediate action.

C. The Commission Should Reject An Open-Ended Access Recovery Fund

A broad range of stakeholders opposed entirely the establishment of a USF recovery fund to replace ICC revenues "lost" as a result of reform[25] or argued for strict limits on it.[26] USF

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[24] *See* Sprint Comments at 5, 8-13.

[25] USA Coalition Comments at 22-24; Sprint Comments at 37-38; RCA Comments at 19; XO Comments at 49-50; Free Press Comments at 7-8; Cbeyond Comments at 15-17.

[26] CTIA Comments at 42-44 (recovery mechanism should not ensure revenue neutrality and should provide only a transition when an ILEC can show that its rates otherwise would be unaffordable); Time Warner Cable Comments at 8-12 (recovery should depend on a showing of extraordinary circumstances and compelling evidence of consumer need and should be limited to a three year period); Verizon Comments at 20-21, 44-46 (carrier must charge retail rates in line with national benchmark in order to receive any recovery, which would be less than amount of lost ICC revenue, and fund would sunset after three years); Ohio PUC Comments at 60-61 (near-term CAF should include access recovery fund, but no need for such a fund in long-term CAF); Ad Hoc Comments at 49-53, 63 (recovery should be permitted only upon a showing that a carrier has no other opportunity to recoup costs from regulated and unregulated revenues, including an analysis of increased demand associated with reduced charges); NASUCA Comments at 112-13 (carrier seeking such recovery must show total revenues and impact of loss of ICC revenue, but should not be guaranteed revenue neutrality); California PUC Comments at 20-21 (recovery should be based on total company regulated and non-regulated revenues and cost savings); Cbeyond Comments at 16-17 (if any recovery is allowed, it should be based on all regulated and unregulated revenues above a certain benchmark and should not be permitted where local service rates are deregulated); Cox Comments at 14-15 (recovery should be based on national retail rate benchmark and should not be permitted where carrier has access to state USF funding to make up for reduced ICC revenues); Comcast Comments at 19 (carriers should not receive dollar-for-dollar recovery of revenues previously obtained from ICC charges; recovery should depend on regulated and non-regulated revenues and efficiencies).

support should be based on the costs of serving customers in a particular area, not on the historic ICC rates charged by the local carrier. All high-cost universal service funds are intended "to benefit the customer, not the carrier."[27]

Based on this record and the statutory principles governing USF support, the Commission should reject the establishment of an ICC revenue recovery fund. If the Commission nevertheless creates an ICC recovery fund, access to the fund and the duration of the fund should be limited to ensure that it "benefit[s] the customer, not the carrier" to the extent possible. A carrier should recover from the fund only to the extent that it can demonstrate that its retail service rates would be unaffordable otherwise, taking into account all regulated and unregulated revenues and cost savings resulting from lower ICC payments to other carriers.

T-Mobile also agrees with the majority of parties that supported relaxing or eliminating SLC caps as a way of providing carriers with increased flexibility to recover their costs and argued that any recovery from a fund should be permitted only if a carrier has increased its SLCs to the maximum extent allowed.[28] The amount of any recovery should be based on the assumption that the carrier has recovered "lost" ICC revenue from increased SLCs to the maximum extent allowed and should be reduced to the extent that a carrier's local service rates are less than an established national retail rate benchmark. Moreover, any recovery fund should

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[27] *See Alenco Commc'ns., Inc. v. FCC*, 201 F.3d 608, 616 (5th Cir. 2000) ("*Alenco*").

[28] AT&T Comments at 6, 32-35; Cbeyond Comments at 16-17 (permitting only SLC increases that do not shift costs among groups of customers or geographic areas); Comcast Comments at 20; Cox Comments at 14-15; Frontier Comments at 10-11; Sprint Comments at 13; Time Warner Cable Comments at 10; Windstream Comments at 47. *But see* Ad Hoc Comments at 56-62 (Commission's proposals would increase SLCs far above costs); Free Press Comments at 7 (current SLCs are too high); NASUCA Comments at 114 (increasing SLC to recover lost ICC revenue inappropriately mixes jurisdictional costs).

sunset after three years, consistent with suggestions in the initial comments,[29] unless a carrier can demonstrate that it needs additional support in order to maintain reasonable retail rates. These restrictions are essential to ensure that an ICC recovery fund does not become an unbounded ILEC entitlement fund.

II. THE RECORD AND STATUTORY GOALS SUPPORT COMPETITIVELY AND TECHNOLOGICALLY NEUTRAL HIGH-COST UNIVERSAL SERVICE REFORMS THAT PROMOTE MOBILE BROADBAND DEPLOYMENT

A. The Initial Comments Support The Elimination Or Limiting Of ILEC Legacy High-Cost Funding

The record strongly supports the proposals to eliminate or restrict the various forms of high-cost support currently received by the ILECs and the accompanying regulatory apparatus and to transition legacy support to the CAF.[30] As CTIA pointed out, the bulk of the existing high-cost funding, more than $3 billion annually, is directed to ILECs, despite the rapidly declining number of customers they serve.[31] A number of parties agreed with T-Mobile that the Commission should eliminate rate-of-return ("ROR") regulation and follow the recommendation in the NBP to "require rate-of-return carriers to move to incentive regulation."[32]

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[29] *See* Time Warner Cable Comments at 8-11 (recovery should be limited to a three year period); Verizon Comments at 20-21, 44-47 (recovery fund should sunset after three years); Ohio PUC Comments at 60-61 (no need for recovery fund in long-term CAF).

[30] *See, e.g.,* AT&T Comments at 6, 109-111 (phase down all legacy high-cost support received by all carriers and transition it to the CAF by 2017); Satellite Broadband Providers ("SBP") Comments at 18 (legacy providers should not receive support where they are not the most efficient providers); Sprint Comments at 32-34 (Commission should phase out existing high-cost mechanisms to all carriers within three years).

[31] CTIA Comments at 14.

[32] NBP at 147. *See* CTIA Comments at 27-29; MTPCS and Viaero Comments at 24-26, 42-43; Verizon Comments at 53-55; Time Warner Cable Comments at 33.

If the Commission does not eliminate ROR regulation, there was widespread agreement with T-Mobile that the Commission should, at the very least, adopt the proposals in the NPRM to introduce "elements" of incentive-based regulation to ROR carriers.[33] Specifically, several parties supported the Commission's proposals to (1) eliminate local switching support, which encourages carriers to retain inefficient circuit-switched technology and to resist efficient consolidation of study areas,[34] (2) modify high-cost loop support ("HCLS") and eliminate safety net additive support, which creates perverse incentives for carriers to remain inefficiently small,[35] and (3) streamline the study area waiver process and revise the "parent trap" rule in order to remove barriers to consolidation.[36] High-cost support for rural ILEC ("RLEC") corporate overhead expenses inflates those costs and should be eliminated or at least cut back.[37]

The record also widely supports the elimination of IAS, which goes to larger ILECs subject to price cap regulation and their competitors, and transitioning that support to the CAF.[38]

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[33] *See, e.g.,* CTIA Comments at 28-29.

[34] *See* Ad Hoc Comments at 12-14; Comcast Comments at 13-14; COMPTEL Comments at 30; CTIA Comments at 15; NCTA Comments at 5-7; NASUCA Comments at 43-44; Sprint Comments at 33-34; Time Warner Cable Comments at 25.

[35] *See* Ad Hoc Comments at 18-19; Comcast Comments at 13; COMPTEL Comments at 30; CTIA Comments at 15; NCTA Comments at 11-12; Sprint Comments at 33-34; Windstream Comments at 33-39 (HCLS should be distributed based on forward-looking costs and reduced reimbursement percentages); XO Comments at 37 (HCLS reimbursement rates should be reduced).

[36] *See* NASUCA Comments at 46 (proposals to reduce barriers to operating efficiencies should reduce carriers' dependence on the USF and facilitate broadband deployment); NECA Comments at 58.

[37] Ad Hoc Comments at 20-21; CTIA Comments at 17 (59 percent of every high-cost subsidy dollar to ILECs goes to inflated overhead expenses); Free Press Comments at 4-5; NCTA Comments at 12-13; NECA Comments at 11, 41-42; Time Warner Cable Comments at 25.

[38] *See* Free Press Comments at 4-5; NCTA Comments at 5-7; NASUCA Comments at 43-45; Time Warner Cable Comments at 25; Ad Hoc Comments at 31-38 (price cap carriers earning

Because the per-line IAS received by ETCs effectively has been reduced by the nationwide IAS and interim CETC caps,[39] any phase-out of IAS should begin with the reduction of ILEC per-line IAS to the per-line level of IAS received by the CETCs in the same state in the competitively neutral manner required by statute.[40]

Other parties also echoed T-Mobile's support for re-examination of the inflated 11.25 percent authorized rate of return,[41] the implementation of a "more rigorous" process to determine whether ILEC investments are used and useful,[42] and the establishment of a limit on total per-line high-cost support well under the $3,000 per line ceiling proposed in the NPRM.[43] Finally, even parties opposing the elimination or restricting of these ILEC support mechanisms implicitly concede that they could be reduced when the CAF is fully implemented.[44]

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tremendous rates of return); Comcast Comments at 14-15; Sprint Comments at 33; XO Comments at 38.

[39] *See High-Cost Universal Service Support*, 23 FCC Rcd 8834 (2008).

[40] *Alenco*, 201 F.3d at 621; T-Mobile Comments at 12-12; CTIA Comments at 17-18.

[41] Ad Hoc Comments at 27-28; CTIA Comments at 28; NCTA Comments at 13-14.

[42] CTIA Comments at 28-29.

[43] *See* Ad Hoc Comments at 24-27 ($3,000 may be acceptable interim cap, but Commission should move toward a forward-looking cap based on the current non-rural high-cost model); CTIA Comments at 16-17.

[44] *See* ITTA Comments at 11-12 (local switching support and safety net additive support should be maintained until the CAF is fully implemented); CenturyLink Comments at 27-30 (IAS remains necessary until a long-term CAF is operational).

B. Any Phase Out Of CETC Support Must Be Competitively And Technologically Neutral

A wide range of parties correctly argued that the timeline for phasing out CETC high-cost support should mirror the timeline for reductions in ILEC support.[45] Other parties also echoed T-Mobile's concern that the funds now distributed to CETCs should be dedicated solely to mobility and broadband and should not fund inefficient revenue replacement for ILECs.[46]

That wireless CETCs never collected access charges[47] does not override their statutory right to portable, "competitively-neutral funding" as long as such funding exists for any carrier.[48] Once implicit support through access charges is made explicit in the form of high-cost support, it must be distributed in a neutral manner.[49] All high-cost universal service funds are intended "to

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[45] MTPCS and Viaero Comments at 6-8; USA Coalition Comments at 14-16. *See also* AT&T Comments at 109-11 (all legacy high-cost support should be phased down for all types of carriers identically); RCA Comments at 15 (if CETC support redirected to CAF in spite of concerns as to the Commission's authority to support broadband, all support to wireline and wireless carriers should be transitioned over an equal time frame); Sprint Comments at 33-34 (high-cost support should be eliminated for all ETCs within three years); Frontier Comments at 12-14 (ILEC IAS funding should not be phased down any faster than high-cost support for CETCs).

[46] *See* Ad Hoc Comments at 39; CTIA Comments at 10-11.

[47] *See* NASUCA Comments at 45-46.

[48] *See Alenco*, 201 F.3d at 616, 620-22 (equal treatment of "all market participants" and portability are statutory requirements).

[49] In fact, the orders creating the high-cost mechanisms that replaced implicit support in access charges required that the funding be portable. *See, e.g., Access Charge Reform*, 15 FCC Rcd 12962, 13053, ¶¶ 209-10 (2000) ("*CALLS Order*"), *aff'd in part, rev'd in part and remanded in part, Texas Office of Public Util. Counsel v. FCC*, 265 F.3d 313 (5th Cir. 2001), *on remand*, 18 FCC Rcd 14976 (2003) (IAS is fully "portable among all eligible telecommunications carriers serving a supported customer, regardless of whether they are incumbents or competitors and regardless of the technology they use"); *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, 16 FCC Rcd 19613, 19678-79, ¶¶ 151-54 (2001) (subsequent history omitted) (ICLS portable). Similarly, the Commission first spelled out the portability of universal service support

benefit the customer, not the carrier."[50] Whether a carrier may impose access charges or whether certain high-cost mechanisms replaced implicit support in access charges thus should have no impact on the portability of high-cost support for the carrier's customers, unless and until the Commission eliminates the mechanisms altogether.

Moreover, any fund that is not available to all CETCs by definition cannot, under the statutory neutrality and portability requirements, be treated as a universal service fund under Section 254 of the Communications Act of 1934 ("the Act"). Section 254(d) of the Act imposes contribution obligations only for "the . . . mechanisms established by the Commission to preserve and advance universal service."[51] Because the Commission has no authority other than Section 254(d) to require carriers to contribute to any type of support mechanism, neither wireless carriers nor any other category of service provider could be required to contribute to a fund that excludes wireless CETCs from its benefits. Finally, as AT&T previously pointed out, there is no assurance that the elimination of CETC support prior to the implementation of the CAF and Mobility Fund would comport with Section 254(b)'s goal of "specific, predictable and sufficient" USF support.[52]

C. The Distribution Of High-Cost Support Should Facilitate Deployment Of Mobile Broadband Services

The record and the Communications Act support T-Mobile's position that USF reform must produce a competitively neutral mechanism for distributing support that promotes the

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in *Federal-State Joint Board on Universal Service*, 12 FCC Rcd 8776, 8932-33, ¶¶ 286-89 (1997), *aff'd sub nom. Texas Office of Pub. Util. Counsel v. FCC,* 183 F.3d 393 (5th Cir. 1999).

[50] *Alenco*, 201 F.3d at 621.

[51] 47 U.S.C. § 254(d).

[52] Comments of AT&T Inc. at 23, WC Dkt. No. 10-90 (July 12, 2010).

deployment of mobile broadband services. In that vein, competitive providers properly opposed a right of first refusal ("ROFR") to CAF funding for ILECs. A ROFR would lock in ILECs' legacy position, violating competitive and technological neutrality and unnecessarily expanding the size of the CAF.[53] A ROFR also would subvert the Commission's stated goals of making eligibility for CAF support "company- and technology-agnostic"[54] and ensuring that USF reform "will not unfairly advantage one provider over another or one technology over another."[55]

In addressing the distribution of CAF support, a number of parties supported the use of reverse auctions as a way of harnessing competitive incentives to reduce support costs. Most of those commenters favored technologically neutral auctions open to mobile, wireline, and other bidders.[56] Some parties opposed reverse auctions on the grounds that winning bids would tend not to cover the highest cost areas, leaving them unserved and might result in stranded investment where an RLEC is replaced by a new provider.[57] A few parties proposed various

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[53] *See* CTIA Comments at 24-26; RCA Comments at 12, 15, 18; Sprint Comments at 41; Time Warner Cable Comments at 30-31; COMPTEL Comments at 31.

[54] NBP at 145.

[55] NPRM, 26 FCC Rcd at 4585, ¶ 82. Only ILECs and state commissions supported a ROFR. *See, e.g.,* CenturyLink Comments at 34, 38-40; Ohio PUC Comments at 44 (favoring ROFR approach "in those areas where a small, rural ILEC would be at an inherent disadvantage when competing against large ILECs and intermodal competitors"); Windstream Comments at 9 (although CETCs should be able to challenge and replace ILEC if willing to provide service for less support).

[56] *See, e.g.,* Comcast Comments at 16-19; SBP Comments at 12-13; Verizon Comments at 58-63; ViaSat Comments at 24-26; Time Warner Cable Comments at 26, 30; Sprint Comments at 43-44. The NPRM cited, *inter alia*, the "71 Economists' Proposal" as a basis for its reverse auction proposal. *See* NPRM, 26 FCC Rcd at 4646, 4689, ¶¶ 268 n.429, 419 n.594 (citing Paul Milgrom, *et al.,* Comments of 71 Concerned Economists: *Using Procurement Auctions to Allocate Broadband Stimulus Grants* (Apr. 13, 2009)).

[57] *See, e.g.,* Joint Board State Member Comments at 78-85; MTPCS and Viaero Comments at 30-36; NASUCA Comments at 47-49, 58-59, 66; NECA Comments at 76-79; ITTA Comments at 17, 23-24

competitive procurement mechanisms under which applicants would respond to an RFP by specifying the amount of funding they would need to serve a certain area, and funding would be awarded to those that provided the maximum benefit per dollar.[58] CTIA and ITTA, like T-Mobile, supported trials of reverse auctions and other market-based mechanisms, after which the Commission could choose the most effective approach or approaches tested.[59]

CTIA also reiterated its support for "winner takes more" auctions, in which the lowest bidder would be awarded the full amount of its bid, but one or more other bidders also would be awarded lesser amounts of support.[60] Unlike the single winner reverse auction mechanism proposed in the NPRM, this multiple winner structure, which T-Mobile has supported in the past, would enhance competition and would address RLEC concerns regarding stranded investment.[61]

Although multiple winner reverse auctions would best achieve all of the Commission's USF goals, the lack of consensus on the most efficient and effective CAF support distribution mechanism may argue for near term pilot programs applying reverse auctions, including multiple winner auctions, and other market-based approaches. Pilot projects would help determine whether a different mechanism or mechanisms should be used for the most rural, high-cost areas.

If any single winner reverse auction pilots are conducted, they also should be conducted under the safeguards previously advocated by T-Mobile and discussed in the NPRM – limiting bids of "packages" of census blocks to certain predefined areas and requiring parties submitting

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[58] *See, e.g.,* Cox Comments at 7-8; AT&T Comments at 89-90, 98-100, 108-09.

[59] CTIA Comments at 13-14; ITTA Comments at 23.

[60] CTIA Comments at 13-14. *See also* Comments of T-Mobile USA., Inc. at 4 n.8, WC Dkt. No. 05-337 (May 31, 2007) ("T-Mobile High-Cost Comments").

[61] *See* T-Mobile High-Cost Comments at 4-5 & n.8; Reply Comments of T-Mobile USA, Inc. at 7-10, WC Dkt. No. 05-337 (Nov. 8, 2006).

package bids to submit bids for the individual blocks as well.[62] Another possible safeguard could cap the amount of support that could be awarded to any single bidder or affiliated group of bidders in an auction, in order to prevent one or two large bidders from dominating an auction. The cap could be set at a specific dollar amount or as a percentage of the total amount to be awarded in a given auction. These safeguards could reduce substantially the competitive risks that the initial comments raised regarding single winner auctions.[63] Following a testing regime for different reverse auction mechanisms and other market-based methods for distributing support, the Commission would be better positioned to choose the approach or combination of approaches that best meets its broadband deployment goals.[64]

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[62] *See* NPRM, 26 FCC Rcd at 4663, ¶ 344; Comments of T-Mobile USA, Inc. at 7-9, WT Dkt. No. 10-208 (Dec. 16, 2010) ("T-Mobile Mobility Fund Comments").

[63] *See* MTPCS and Viaero Comments at 13-15, 30-34 (it should be possible for more than one carrier to receive support; single winner auctions are inconsistent with the pro-competitive mandate of the Communications Act); USA Coalition at 8-14 (single winner reverse auctions would destroy competition and limit the possibility of competitive entry); NECA Comments at 80-81 (high-cost support should not be limited to one carrier in a market); Public Knowledge Comments at 11-12 (supporting only one winner per area suppresses potential competition); NASUCA Comments at 64-65 (if there is only one supported service provider in each area, the supported service will be provided on a monopoly basis); RCA Comments at 15-16 (support for only one provider in each area will result in the exclusion of wireless carriers). *See also* T-Mobile Mobility Fund Comments at 7.

[64] *See also* RCA Comments at 18 (Commission should "refrain from embracing single-winner reverse auctions until it gains greater experience with them through its proposed Mobility Fund trial").

D. The Record Supports Simplified And Competitively And Technologically Neutral Service Definition And Public Interest Requirements

1. A Broad Consensus Supports A Flexible Broadband Service Definition That Reflects Consumer Preferences

T-Mobile supports the NPRM's proposal that broadband service, for purposes of USF support, be defined without reference to any particular technology.[65] As the Commission notes, "speed is only one measure of broadband performance,"[66] and the speed of mobile networks may vary at different points in time, as the capacity per user is largely dependent upon the number of other users in a given sector, as well as other factors.[67]

In fact, a broad representation of commenters supported a "holistic" broadband service definition, taking into account a wide range of service characteristics, such as jitter, latency, packet loss, and mobility, as well as a speed requirement more consistent with the wireless services that consumers want and use (*e.g.,* 4 Mbps/768 Kbps).[68] These commenters pointed out that achieving a 1 Mbps upstream speed would be costly and would provide only limited incremental benefit over a 768 Kbps upstream speed.[69]

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[65] *See* NPRM, 26 FCC Rcd at 4592, ¶ 104.

[66] *Id.* at ¶ 105.

[67] *See id.* at 4596, ¶ 117. Other relevant factors include the customer's device, weather, and topography.

[68] AT&T Comments at 91. *See also id.* at 88, 92-96; CTIA Comments at 32-34; TIA Comments at 3, 11-13 (speed-based definition will leave some of the hardest-to-reach households uncovered); RCA Comments at 19; CenturyLink Comments at 22 (Commission should adopt an initial upstream speed standard of 768 Kbps); Windstream Comments at 15-18 (Commission should adopt an initial speed standard of 4 Mbps/768 Kbps).

[69] *See, e.g.,* Windstream Comments at 18.

A broadband speed public interest standard must balance consumers' need and desire for mobility with broadband capacity in order to meet the Commission's goal of "making broadband connectivity available everywhere in the United States."[70] In particular, adults living in poverty are more likely to have "cut the cord" and rely exclusively on wireless service than higher income Americans,[71] and low income Americans "are more likely than the average American to access the Internet through a mobile device."[72] The Commission should take care not to deprive these users of access to broadband service that they can afford. As Sprint pointed out, the Commission should define broadband in a flexible way that accommodates the differences and trade-offs among various broadband technologies. Speed or bandwidth requirements associated with landline technology will limit, if not eliminate, the ability of wireless and satellite providers to compete for support,[73] a result that will slow broadband deployment and harm consumers' interests.

2. The Record Supports The Elimination Of COLR And Related ETC Requirements

Because "[p]roviders that benefit from public investment in their networks should be subject to *clearly defined* obligations associated with the use of such funding,"[74] T-Mobile

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[70] *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, 25 FCC Rcd 4181, 4183 ¶ 3 (2010).

[71] Paul W. Garnett, Assistant Vice President, Regulatory Affairs, CTIA, Written Testimony Before the Federal-State Joint Board on Universal Service at 3 (Feb. 20, 2007).

[72] Julius Genachowski, Chairman, FCC, *Remarks as Prepared for Delivery CTIA Wireless 2011* (Mar. 22, 2011), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-305309A1.pdf .

[73] Sprint Comments at 39-40. Although Cox advocated a standard of 4/1 Mbps, it conceded that the Commission may have to subsidize service at lower speeds if the support cost per line in certain areas is too high at a 4/1 Mbps speed. Cox Comments at 5.

[74] NPRM, 26 FCC Rcd at 4588, ¶ 90 (emphasis added).

opposed the NPRM's proposal that "recipients . . . be subject to any applicable baseline state . . . requirements for the provision of voice service by ETCs."[75] State COLR obligations are often vague or difficult to identify, vary from state to state, and are not well-tailored to the achievement of federal USF goals.[76] A number of parties also supported the elimination of state COLR requirements – and, in the case of AT&T, requirements paralleling COLR obligations that the Commission has imposed on ETCs throughout their service areas – as a condition of USF support.[77]

They point out that, in the dynamic competitive voice and broadband markets that characterize communications services today, legacy service requirements have become superfluous and irrelevant, other than in connection with the geographic areas where services receive support. Service obligations that prop up the dying "POTS" (plain old telephone service) regime will only impede the transition to all-IP networks.[78] AT&T, for example, argues that CAF support recipients should be required to provide VoIP and other broadband services meeting neutral service criteria in areas where support is provided but should not be subject to any other legacy ETC or state regulatory requirements for any of their services.[79]

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[75] *Id.* at 4591, ¶ 100.

[76] *See id.* at 4588, ¶ 91, n.157 (observing that "COLR obligations derive from state statutes, state regulations, certificates of public convenience and necessity, and administrative practice").

[77] *See* Cox Comments at 11 (COLR requirements should be eliminated); AT&T Comments at 3-5, 54-60, 83-84 (COLR obligations and ETC requirements imposing a federal COLR-like obligation should be eliminated); CTIA Comments at 32 (questioning continued relevance of COLR obligations);

[78] *See, e.g.,* AT&T Comments at 54, 75-83.

[79] *Id.* at 103-05.

Other commenters, particularly small and mid-size ILECs, support continuation of state-based COLR obligations as consumer protections,[80] but they in fact skew support to wireline providers, irrespective of service quality or coverage. For example, such obligations are often illusory, given the substantial line-extension charges often applied to new ILEC customers in remote locations.

Accordingly, in order to promote the competitively and technologically neutral deployment of broadband service, the Commission should impose uniform, neutral broadband service obligations only for those areas that receive services support and eliminate all other COLR and ETC obligations.[81] Because broadband is an inherently interstate and international service, it should not be subject to varying obligations in different states.[82]

Moreover, no open Internet public interest requirement[83] is necessary to protect consumers, and such a requirement might deter providers from participating in the CAF program.[84] Open Internet rules would be especially burdensome for mobile carriers. Because the Commission acknowledged that certain rules promulgated in the *Net Neutrality Order* should not apply to mobile broadband services, there is no justification for applying them through the back door as USF conditions, as some parties advocate.[85]

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[80] *See, e.g.,* NECA Comments at 69-75.

[81] Imposing obligations where services receive support also meets concerns that carriers that are free of any ETC requirements would "game" the system. *See* MTPCS and Viaero Comments at 15-16.

[82] *See* CTIA Comments at 31-32.

[83] NPRM, 26 FCC Rcd at 4607,¶ 150 n.250.

[84] AT&T Comments at 106-07.

[85] *Preserving the Open Internet*, 25 FCC Rcd 17905, 17956-62, ¶¶ 93-106 (2010) ("*Net Neutrality Order*"). *See* NAF, CU and MAP Comments at 12 (open Internet rules should be

CONCLUSION

T-Mobile urges the Commission to adopt ICC and USF reform plans and IP interconnection requirements consistent with its initial comments and these reply comments. The record demonstrates that most ICC charges could and should be eliminated over a relatively brief transition and that the PSTN should be steered toward a more efficient IP structure through interconnection and traffic exchange rules. The record also supports the competitively and technologically neutral phasing out of today's high-cost USF programs and their transition into a new CAF and Mobility Fund and confirms the need for pilot programs to determine the most effective method of distributing the new funds. T-Mobile looks forward to working with the Commission to remove the last regulatory obstacles to universal broadband service.

Respectfully submitted,

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applied to all USF recipients equally, including wireless providers); Windstream Comments at 15, 21-25 (same).